

106TH CONGRESS
2D SESSION

S. 3074

To make certain immigration consultant practices criminal offenses.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 20, 2000

Mr. SCHUMER introduced the following bill; which was read twice and referred
to the Committee on the Judiciary

A BILL

To make certain immigration consultant practices criminal
offenses.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Immigration Protec-
5 tion Act of 2000”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) There is an epidemic of fraud directed
9 against aliens engaged in dealings with the Immigra-
10 tion and Naturalization Service.

1 (2) Fraudulent immigration consultants target
2 aliens working their way through the maze of immi-
3 gration law and extract hundreds of thousands of
4 dollars in exchange for promises of help in dealing
5 with the Immigration and Naturalization Service.

6 (3) For example, phony immigration consult-
7 ants—who lure clients by approaching aliens in line
8 at Immigration and Naturalization Service buildings
9 or by advertising in foreign-language newspapers—
10 promise, for a fee, to help immigrants obtain resi-
11 dency or green cards by using personal back-channel
12 connections at the Immigration and Naturalization
13 Service or by filing a supposedly necessary applica-
14 tion.

15 (4) Rather than legitimately assist aliens with
16 the Immigration and Naturalization Service, fraudu-
17 lent consultants then take one or a succession of fees
18 and either do nothing, or worse, file meritless asy-
19 lum petitions designed to result in rejection and de-
20 portation.

21 (5) Fraudulent immigration consultants often
22 pose as immigration lawyers. In particular, some
23 who target Spanish-speaking immigrants become no-
24 taries public in order to advertise as “notarios,” who
25 are attorneys in Latin America.

1 (6) Aliens victimized by fraudulent consultants
2 are usually too fearful of deportation, or unsure
3 where to turn, to report the fraud to Government of-
4 ficials. Consequently, fraudulent consultants operate
5 with near-impunity.

6 (7) Because fraudulent immigration consultants
7 work in the shadows and provide services that are
8 unregulated in many States, it is impossible to de-
9 termine how many such illegitimate businesses exist.
10 State officials and immigrants' advocacy groups esti-
11 mate, however, that the problem of aliens exploited
12 by bogus consultants has grown in recent years, and
13 that thousands of fraudulent consultants are at work
14 across the country.

15 (8) Federal and State efforts to rein in fraudu-
16 lent immigration consultants have not succeeded in
17 ending the abuse. At the Federal level, there is no
18 jurisdiction to prosecute fraudulent consultants un-
19 less they participate in the submission of false docu-
20 ments to the Immigration and Naturalization Serv-
21 ice. Since many phony consultants scam aliens with-
22 out filing paperwork with the Immigration and Nat-
23 uralization Service, they cannot be reached by Fed-
24 eral law enforcement.

1 (9) The Department of Justice intended to es-
 2 tablish five Federal-State task forces to combat
 3 fraud by immigration consultants in major cities
 4 with large immigrant populations. Only one such
 5 task force has been established, however—in Los
 6 Angeles.

7 (10) Enforcement by State authorities is spo-
 8 radic. Many make no effort to pursue and prosecute
 9 bogus consultants. And even when con artists are
 10 convicted, most jurisdictions punish fraud against
 11 aliens as misdemeanors.

12 **SEC. 3. DEFINITIONS.**

13 In this Act:

14 (1) ATTORNEY.—The term “attorney” means
 15 any person who is a member in good standing of the
 16 bar of the highest court of any State, possession,
 17 territory, Commonwealth, or the District of Colum-
 18 bia, and is not under any order of any court sus-
 19 pending, enjoining, restraining, disbarring, or other-
 20 wise restricting such person in the practice of law.

21 (2) ACCREDITED REPRESENTATIVE.—The term
 22 “accredited representative” means any organization
 23 or individual that has been accredited by the Board
 24 of Immigration Appeals pursuant to section 292 of
 25 title 8, Code of Federal Regulations.

1 (3) COMPENSATION.—The term “compensa-
2 tion” means money, property, promise of payment,
3 or any other consideration, provided directly or indi-
4 rectly.

5 (4) IMMIGRATION CONSULTANT.—The term
6 “immigration consultant”—

7 (A) means any individual, organization, or
8 entity who in exchange for compensation or the
9 expectation of compensation, promises to pro-
10 vide or provides assistance or advice on an im-
11 migration matter; and

12 (B) does not include any attorney, person
13 employed by and working under the direct su-
14 pervision of one or more attorneys, or any ac-
15 credited representative.

16 (5) IMMIGRATION MATTER.—The term “immi-
17 gration matter” means any proceeding, filing, or ac-
18 tion affecting the immigration or citizenship status
19 of any person which arises under any immigration or
20 naturalization law, Executive order, Presidential
21 proclamation, or action of the Immigration and Nat-
22 uralization Service, other component of the Depart-
23 ment of Justice, the Department of State, or the
24 Department of Labor.

1 **SEC. 4. PROHIBITED ACTS AND CRIMINAL PENALTIES.**

2 (a) PROHIBITED ACTS.—It shall be unlawful for any
3 immigration consultant intentionally, or with reckless dis-
4 regard for the truth to—

5 (1) make any false or misleading statement to
6 any client, prospective client, or the public while pro-
7 viding, offering, or advertising services;

8 (2) make any statement indicating or implying
9 that the immigration consultant can or will obtain
10 special favors from, or has special influence with,
11 any government agency;

12 (3) retain any compensation for any service not
13 performed;

14 (4) refuse to return any document supplied by,
15 prepared on behalf of, or paid for by, any client or
16 prospective client, even in the event of a fee dispute;

17 (5) select forms to be filed with any government
18 agency in connection with an immigration matter;

19 (6) provide information to any government
20 agency without the client's knowledge and consent;

21 (7) engage in the unauthorized practice of law
22 in connection with an immigration matter, as such
23 is defined by applicable State statutes, regulations,
24 rules or municipal ordinances, in conjunction with
25 an immigration matter; and

1 (8) hold himself or herself out to any client,
2 prospective client, or to the public as engaging in or
3 entitled to engage in the practice of law, or uses any
4 title in any language, such as “notario” or “notary
5 public”, to convey attorney status.

6 (b) CRIMINAL PENALTIES.—Any immigration con-
7 sultant who commits any act set forth in subsection (a)
8 shall be fined under title 18 of the United States Code,
9 imprisoned not more than five years, or both.

10 **SEC. 5. ADVERTISEMENT DISCLAIMER, NOTICE AND WRIT-**
11 **TEN CONTRACT.**

12 (a) ADVERTISEMENT DISCLAIMER.—It shall be un-
13 lawful for an immigration consultant to make any adver-
14 tisement unless the advertisement includes a statement
15 that the immigration consultant is not an attorney, that
16 the consultant cannot provide legal advice or select forms
17 for use by clients or prospective clients and that he or
18 she cannot obtain special favors from and has no special
19 influence with, the Immigration and Naturalization Serv-
20 ice.

21 (b) NOTICE.—It shall be unlawful for an immigration
22 consultant to perform immigration consulting services un-
23 less, in any office in which an immigration consultant
24 meets with clients or prospective clients, the immigration
25 consultant has conspicuously displayed a notice, not small-

1 er than 12 inches by 20 inches and in boldface print no
 2 smaller than one inch in height, that includes—

3 (1) a statement that the immigration consultant
 4 is not an attorney, cannot select forms for use by
 5 the client, and cannot provide legal services in any
 6 immigration matter; and

7 (2) a statement that the immigration consultant
 8 cannot obtain special favors from, and has no special
 9 influence with, the Immigration and Naturalization
 10 Service.

11 (c) WRITTEN CONTRACT.—It shall be unlawful for an
 12 immigration consultant knowingly to act in an immigra-
 13 tion matter unless the person has entered into a written
 14 contract (in both English and the other principal language
 15 of the client, if not English) with the client that includes—

16 (1) a description of all services to be performed
 17 by the person under the agreement;

18 (2) the amount to be paid by the client;

19 (3) a statement, printed on the face of the con-
 20 tract in boldface type no smaller than 10 point, that
 21 the person is not licensed and authorized to practice
 22 law in the State in which the immigration consultant
 23 services are to be performed and is unable to per-
 24 form legal services;

1 (4) a statement, printed on the face of the con-
2 tract in boldface type no smaller than 10 point, that
3 any document provided to the immigration consult-
4 ant in connection with the immigration matter may
5 not be retained by the immigration consultant and
6 must be returned to the client at any time requested
7 by the client;

8 (5) a statement that the client may rescind the
9 contract within 72 hours of the time it is executed
10 and receive a full refund of all monies paid to the
11 immigration consultant; and

12 (6) a statement certifying that a copy of the
13 contract has been provided to the client upon execu-
14 tion of the contract.

15 (d) CRIMINAL PENALTIES.—Any immigration con-
16 sultant who knowingly fails to perform any requirement
17 set forth in this section shall be fined under title 18 of
18 the United States Code, imprisoned not more than one
19 year, or both.

20 **SEC. 6. CIVIL ENFORCEMENT.**

21 (a) AGGRIEVED PARTIES.—Any person aggrieved by
22 reason of any violation of section 4 or 5 may commence
23 a civil action in any appropriate United States district
24 court for the relief set forth in subsection (d).

1 (b) CIVIL ACTIONS BY THE ATTORNEY GENERAL.—

2 If the Attorney General of the United States has reason-
3 able cause to believe that any person or group of persons
4 is being, has been, or may be injured by reason of any
5 violation of section 4 or 5, the Attorney General may com-
6 mence a civil action in any appropriate United States dis-
7 trict court for the relief set forth in subsections (d) and
8 (e).

9 (c) CIVIL ACTIONS BY STATE ATTORNEYS GEN-
10 ERAL.—If the Attorney General of a State has reasonable
11 cause to believe that any person or group of persons is
12 being, has been, or may be injured by reason of any viola-
13 tion of section 4 or 5, such Attorney General may com-
14 mence a civil action in the name of such State, as parens
15 patriae on behalf of persons residing in such State, in any
16 appropriate United States district court for the relief set
17 forth in subsections (d) and (e).

18 (d) RELIEF.—In any civil action brought under this
19 section, the court may award appropriate relief, including
20 temporary, preliminary, or permanent injunctive relief and
21 compensatory and punitive damages, as well as the costs
22 of suit and reasonable fees for attorneys and expert wit-
23 nesses. Injunctive relief may include, where appropriate,
24 an order temporarily or permanently enjoining the defend-

1 ant from serving as an immigration consultant in any im-
2 migration matter.

3 (e) CIVIL PENALTIES.—In addition to the relief pro-
4 vided for in subsection (d), which the Attorney General
5 or any State Attorney General may seek on behalf of ag-
6 grieved parties, the court may also assess a civil penalty
7 not exceeding \$50,000 for first violations, and \$100,000
8 for subsequent violations, when sought by the Attorney
9 General of the United States or any State Attorney Gen-
10 eral.

11 **SEC. 7. TASK FORCES.**

12 (a) ESTABLISHMENT OF TASK FORCES.—The Attor-
13 ney General shall establish task forces composed of Fed-
14 eral investigatory and prosecutorial personnel, and any
15 State or local personnel who may be assigned by States
16 to serve, in the eight districts determined by the Attorney
17 General to contain the largest numbers of aliens subject
18 to violations of sections 4 and 5. Such task forces shall
19 investigate, criminally prosecute, and bring civil suits
20 based on violations of sections 4 and 5, section 274C of
21 the Immigration and Nationality Act, section 1546 of title
22 18, United States Code, and any other applicable Federal
23 or State laws.

24 (b) AUTHORIZATION OF APPROPRIATIONS.—

1 (1) IN GENERAL.—There is authorized to be
2 appropriated to the Department of Justice
3 \$7,000,000 for each of fiscal years 2001, 2002, and
4 2003 to carry out this section.

5 (2) AVAILABILITY OF FUNDS.—Amounts appro-
6 priated pursuant to paragraph (1) are authorized to
7 remain available until expended.

8 **SEC. 8. OUTREACH BY IMMIGRATION AND NATURALIZA-**
9 **TION SERVICE.**

10 (a) OUTREACH PROGRAM.—The Commissioner of
11 Immigration and Naturalization shall establish a program
12 to inform aliens about—

13 (1) the obligations of immigration consultants
14 under this Act;

15 (2) methods of law enforcement, redress, and
16 assistance under this Act and any other related law,
17 regulation, or program established by the Immigra-
18 tion and Naturalization Service or other Federal,
19 State, or local agency; and

20 (3) the hotline to be established under sub-
21 section (b).

22 (b) HOTLINE.—The Commissioner of Immigration
23 and Naturalization shall establish a toll-free hotline to be
24 used by aliens and others with knowledge or information
25 of violations of sections 4 and 5, section 274C of the Im-

1 migration and Nationality Act, section 1546 of title 18,
2 United States Code, or any related State or local laws.
3 Callers shall be permitted to provide information any-
4 mously. In situations deemed appropriate by the Commis-
5 sioner of the Immigration and Naturalization Service, call-
6 ers or information provided by callers shall be forwarded
7 to appropriate Federal or State law enforcement authori-
8 ties.

9 (c) AUTHORIZATION OF APPROPRIATIONS.—

10 (1) IN GENERAL.—There is authorized to be
11 appropriated to the Department of Justice
12 \$7,000,000 for each of fiscal years 2001, 2002, and
13 2003 in order to carry out this section.

14 (2) AVAILABILITY OF FUNDS.—Amounts appro-
15 priated pursuant to paragraph (1) are authorized to
16 remain available until expended.

17 **SEC. 9. CONFIDENTIALITY.**

18 (a) IN GENERAL.—Except as otherwise provided in
19 this section, neither the Attorney General nor any other
20 official or employee of the Department of Justice or any
21 bureau or agency thereof may use the information pro-
22 vided by any person (including an alien not lawfully
23 present in the United States) in relation to a violation of
24 sections 4 and 5 for any purpose other than to carry out
25 this Act. If such information is provided by an alien not

1 lawfully present in the United States, such information
2 shall not be used for the purpose of identifying or remov-
3 ing the person from the United States or imposing other
4 sanctions against the person.

5 (b) EXCEPTION.—Subsection (a) shall not apply if
6 the Attorney General or other official or employee of the
7 Department of Justice, or bureau or agency thereof, deter-
8 mines that the information was not provided in good faith
9 in conjunction with a credible report relating to a violation
10 of this Act, but was provided in order to evade the applica-
11 tion of Federal immigration law.

12 (c) CRIMINAL PENALTY.—Whoever knowingly uses
13 information in violation of this section shall be fined not
14 more than \$10,000.

15 **SEC. 10. NONPREEMPTION OF MORE PROTECTIVE STATE**
16 **AND LOCAL LAWS.**

17 The provisions of this Act supersede State laws, regu-
18 lations, and municipal ordinances only to the extent such
19 State and local laws impede the application of any provi-
20 sion of this Act. States and municipalities may impose re-
21 quirements supplementing those imposed by this Act.

